means of accomplishing the same result, the quick method—other things equal—should be chosen. Procedural regularity is only a means to an end, and should never be accorded any independent value. The great merit of the common law has been its flexibility in meeting new demands and changed conditions, and courts which would rather be orthodox than useful are not true to its liberal spirit.

A striking instance of the progressive attitude toward remedial rules—perhaps extreme, but certainly cheering to a long suffering public,—forming a startling contrast to the Ohio case under consideration, is found in the Michigan doctrine relative to the use of another extraordinary writ,—mandamus. In this state mandamus will issue to compel the vacating of an injunction improperly issued, *Tawas, etc., R. R. C.* v. *Circuit Judge,* 44 Mich. 479, or the vacating of an order appointing a receiver, *Port Huron, etc., R. R. Co.* v. *Circuit Judge,* 31 Mich. 456, in cases where delay will result in serious injury. In the *Tawas Case* the court said: "In granting this remedy courts are always disposed to confine it to cases where there is no other adequate specific remedy. But the existence of a remedy of another nature which is not adequate furnishes no reason for refusing it, if the necessity of justice requires it. Mandamus * * * is from its very nature a remedy that cannot be hampered by any narrow or technical bounds."

In these mandamus cases the court, impressed with the need for a speedy adjudication by the court of last resort, used the writ as a substitute for a summary appeal. In the prohibition case in Ohio there was the same or a greater need for a speedy adjudication, and the writ of prohibition offered a perfectly suitable means for getting it, but the court, with a splendid opportunity before it to show an enlightened appreciation of its obligation to serve the public could not get out of the rut of technicality. The case is illustrative of a reactionary judicial attitude which fails to see that the modern world has no patience with procedural red tape, but is interested in procedural rules solely as a means for making the courts more efficient agencies for judicial administration. E. R. S.

THE LUSITANIA—DESTRUCTION OF ENEMY MERCHANT SHIPS WITHOUT WARNING.—On February 4, 1915, the German government proclaimed a war zone including the waters surrounding Great Britain and Ireland, and gave warning that every enemy merchant ship found within the zone would be destroyed. The proclamation anticipated that in the execution of measures of destruction it would not be "always possible to avert the dangers threatening the crews and passengers." A memorial issued at the same time warned neutral powers "not to continue to entrust their crews, passengers, or merchandise to such vessels." This extraordinary program was justified principally as a measure of retaliation for Great Britain's alleged violations of the law of nations in the conduct of the war against Germany. (See AM. JOURN. INT. LAW Suppl. (1915), Vol. IX, Special Number, pp. 83 ff., 129-141, 149, 155).

The tragic consequences of this policy of retaliation reached an early

climax on May 7, 1915, in the sinking of the Lusitania. The famous Cunard liner, one of the largest passenger ships in the world, was torpedoed by a German submarine off the south coast of Ireland, while bound from New York to Liverpool with 1,959 persons on board, and sunk with a loss of over 1,198 souls, including 124 American citizens.

Some issues of fact and law arising out of the Lusitania tragedy are considered in an opinion handed down on August 23, 1918, by the United States District Court for the southern district of New York. (*The Lusitania,* 251 Fed. 715.) Numerous suits having been commenced against the Cunard Steamship Company, owner of the Lusitania, the Company filed a petition in the District Court for limitation of liability. The record included a mass of testimony taken before the Wreck Commissioner's Court in London in 1915, as well as the depositions and testimony of a considerable number of passengers, members of the crew, and experts, taken in relation to this proceeding. The Court granted the petition and dismissed the claims without costs.

The significant facts, concisely stated, are as follows: an unarmed, enemy merchant ship, carrying a cargo which included a quantity of absolute contraband, carrying over one thousand noncombatant passengers of whom many were citizens of neutral states, was torpedoed and sunk on the high seas without warning, without making any provision for the safety of those on board, and as part of a deliberately preconceived plan of which belligerents and neutrals had received formal notice.

The Court reviews the evidence in regard to equipment, cargo, personnel, the navigation of the ill-fated vessel, and the circumstances of its destruction, and concludes that the charge of negligence in these respects cannot be successfully maintained against the petitioner. The allegation that the commanding officer was negligent in failing to comply with every detail of the Admiralty advices for avoiding submarines is also dismissed as unfounded. "The fundamental principle in navigating a merchantman," says the Court, "whether in times of peace or of war, is that the commanding officer must be left free to exercise his own judgment." What was required of the commanding officer was "that he should seriously consider, and as far as practicable, follow the Admiralty advices, and use his best judgment as events and exigencies occurred; and if a situation arose where he believed that a course should be pursued to meet emergencies which required departure from some of the Admiralty advices as to general rules of action, then it was his duty to take such course, if in accordance with his carefully formed deliberate judgment." (251 Fed. 728).

Even conceding negligence on the part of the petitioner, the Court finds other reasons, which are of greater present interest, for disposing of any question of liability. "It is an elementary principle of law that, even if a person is negligent, recovery cannot be had, unless the negligence is the proximate cause of the loss or damage." (251 Fed. 732.) "There is another rule, settled by ample authority, viz. that, even if negligence is shown, it cannot be the proximate cause of the loss or damage, if an independent illegal act of a third party intervenes to cause the loss" (251 Fed. 732.)

Did an independent illegal act of a third party intervene to cause the loss in this case? The question is readily answered in the affirmative, after a preliminary reference to two general principles that have been recognized many times by the courts of England and the United States. In the first place, international law forms part of the law of the land, and must be ascertained and administered by courts of justice of appropriate jurisdiction as often as any question of right depending on it is duly presented for determination. See *The Scotia* (1871), 14 Wall. 170, 187; *Hilton* v. *Guyot* (1895), 159 U. S. 113, 163; *The New York* (1899), 175 U. S. 187, 197; *The Paquete Habana* (1900), 175 U. S. 677, 700; *Kansas* v. *Colorado* (1902), 185 U. S. 125, 146; (1907), 206 U. S. 46, 97; *The Queen* v. *Keyn* (1876), L. R. 2 Ex. D. 63, 154; *West Rand Central Gold Mining Co.* v. *The King* (1905), L. R 2 K. B. D. 391, 406; *The Zamora* (1916), L. R. 2 A. C. 77. In the second place, to ascertain international law resort may be had to the customs and usages of civilized nations, and, as evidence of these, to the works of commentators and jurists. See Kent, *Com.*, 12th ed., I, 19; *Hilton* v. *Guyot* (1895), 159 U. S. 113, 163, 214; *The Paquete Habana* (1900), 175 U. S. 677, 700; *Triquet* v. *Bath* (1764), 3 Burr. 1478, 1481; *The Queen* v. *Keyn* (1876), L. R. 2 Ex. D. 63, 154, 202; *Macartney* v. *Garbutt* (1890), L. R. 24 Q. B. D. 368; *West Rand Central Gold Mining Co.* v. *The King* (1905), L. R. 2 K. B. D. 391, 401. The writings of the publicists, as well as the prize regulations of the principal maritime powers, support the conclusion that the destruction without warning of an unarmed merchant ship is in contravention of an established rule of the law of nations, and is, therefore, in the case of *The Lusitania,* an independent illegal act of a third party intervening to cause the loss. "The fault, therefore, must be laid upon those who are responsible for the sinking of the vessel, in the legal as well as moral sense. It is therefore not the Cunard line, petitioner, which must be held liable for the loss of life and property. The cause of the sinking of the Lusitania was the illegal act of the Imperial German government, acting through its instrument, the submarine commander, and violating a cherished and humane rule observed, until this war, by even the bitterest antagonists." (251 Fed. 736.) It is recognized that reparation for such a wrong must be enforced by a higher tribunal: "But while, in this lawsuit, there may be no recovery, it is not to be doubted that the United States of America and her Allies will well remember the rights of those affected by the sinking of the Lusitania, and, when the time shall come, will see to it that reparation shall be made for one of the most indefensible acts of modern times." (251 Fed. 736.)

The case suggests more fundamental problems which the Court, of course, could hardly be expected to consider. It is familiar learning, for example, that the history of war law is a record of unsuccessful protests against the use of new and unusual instruments of destruction. Can the international society, as at present constituted, hope to outlaw submarine warfare any more effectually than it has outlawed the cross-bow, the machine gun, the high explosive shell, war in the air, or a hundred other devices for the more efficient and economical extermination of mankind?

Again, an important part of the law of war has been founded upon a distinction between combatants and noncombatants. Can the distinction be preserved in modern warfare? Finally, it has been considered that one of the most beneficial developments of the past century has consisted in a more accurate definition of the rights and duties incident to neutrality. Can the status of neutrality survive? In short, is there any middle course between a more adequate organization of the society of nations on the one hand and the perpetuation of anarchy on the other? There must come to all who grasp the full significance of the destruction of the Lusitania a reinvigorated faith in the statesmanship of those leaders here and abroad who are urging the substitution of international organization for international anarchy. E. D. D.

LIABILITY OF CORPORATIONS FOR SLANDER.—S. entrusted by the president and general manager of a corporation with the business of obtaining a settlement from plaintiff for a mistakenly supposed shortage in his accounts with the corporation, falsely orally charged him with embezzlement. This charge was made to R., president of another corporation for which the plaintiff was working at the time, and as a step toward getting a settlement by the plaintiff. On the request for a directed verdict, by the defendant, the legal question was presented whether a corporation is liable for slander spoken by the agent of the corporation in the course of his business and in the scope of his authority, and without direction to use, or ratification of the use of, the words spoken, by the directors or chief officers of the corporation. *Held*: the corporation is so liable. *Buckeye Cotton Oil Co.* v. *Sloan,* (1918, U. S. Dist. Ct. Tenn.), 250 Fed. 712. The court says: "We perceive no sound reason why the liability of a corporation for the act of its agent should differ in an action for slander from that in actions for libel, or other torts, and cannot agree with the view expressed in *Southern Ice Co.* v. *Black,* (1916), 136 Tenn. 391, 189 S. W. 861, Ann. Cas. 1917 E. 695.

It is only within recent years that a corporation's liability for slander, as for other torts, has become settled in the United States. TOWNSHEND, LIBEL AND SLANDER (3d. Ed. 1877), §265, said there could be no agency in slander; and since a corporation can act only through agents, it would follow that it could not be guilty of slander.

ODGERS, LIBEL AND SLANDER, (1st. Ed. 1881) said: "A corporation will not, it is submitted be liable for any slander uttered by an officer even though he be acting honestly for the benefit of the corporation and within the scope of his duties, unless it can be proved that the corporation expressly ordered and directed that officer to say those very words: for slander is the voluntary and tortious act of the speaker. NEWELL, DEFAMATION, (1st Ed. 1890), p. 361 says substantially the same. No cases are cited by any of these authors, but in 1897, the Queens Bench Division of the High Court of Ontario, in *Marshall* v. *Railroad Co.,* 28 Ont. 241, by ARMOUR, C. J., says as to one of the counts, "We are all agreed that slander will not lie against a corporation," and would not permit argument on the point. This was a suit